

PROTECTION OF TRADEMARKS IN CHINA

Exchange of notes at Peking October 23, 1905; related note dated January 22, 1906

Entered into force October 23, 1905

*Made obsolete by United States relinquishment of extraterritorial rights in China, in accordance with terms of treaty of January 11, 1943*¹

Treaty Series 479

The American Minister at Peking to the Netherlands Minister at Peking

OCTOBER 23, 1905

MR. MINISTER AND DEAR COLLEAGUE: The Government of the United States being desirous of reaching an understanding with the Government of the Netherlands for the reciprocal protection against infringement in China by citizens of our respective nations of trade marks duly registered in the United States and the Netherlands, I am authorized by the Secretary of State of the United States to inform you that effectual provision exists in American Consular Courts in China for the trial and punishment² of all persons subject to the jurisdiction of the United States who may be charged with and found guilty of infringing in any way trade marks of persons subject to the jurisdiction of the Netherlands which have been duly registered in the United States.

I beg that you will kindly inform me whether American citizens are entitled to the same legal remedies in the Consular Courts of the Netherlands in China as regards the protection from infringement of their trade marks duly registered in the Netherlands.

I have the honor to be, My dear Colleague, Your obedient servant,

W. W. ROCKHILL

His Excellency, Monsieur VAN CITTERS,
etc., etc., etc.

The Netherlands Minister at Peking to the American Minister at Peking

[TRANSLATION]

PEKING, CHINA, *October 23, 1905*

MR. MINISTER AND DEAR COLLEAGUE: Under date of the 23d of October, 1905, Your Excellency was pleased to inform me by your note numbered

¹ TS 984, *ante*, vol. 6, p. 739, CHINA.

² For an explanation regarding the use of the word "punishment," see related note, p. 57.

173 that the Government of the United States of America was desirous of reaching an agreement with the Government of the Netherlands concerning the reciprocal protection of trade marks in China. You added that you had been authorized to declare that the American Consular Courts in China had jurisdiction in all matters concerning the infringement of trade marks by persons under the jurisdiction of the United States, and that consequently complaints made by any person subject to the jurisdiction of the Consular Courts of the Netherlands, in China, to an American Consular Court, for the purpose of securing from persons subject to the jurisdiction of the United States protection for trade marks duly registered in the United States of America, would be tried before said courts in First Instance and on appeal by the competent Courts.

In reply to this communication I have the honor to inform Your Excellency that my Government accepts with pleasure the above agreement and has directed me to do so by the present note.

The Minister of Foreign Affairs at The Hague has furthermore authorized me to state on my part that the laws of the Netherlands protect duly registered trade marks regardless of the nationality of the owner, and that, not only when infringements have been committed in the country itself, but when they have been committed in a country subject to extraterritoriality, as in China.

Consequently the Consular Courts of the Netherlands in China will take cognisance in First Instance, and the Courts of Justice in Amsterdam and Batavia on Appeal, of any complaints made to them on this subject by persons subject to the jurisdiction of the United States.

I avail myself of this opportunity to add that for the object of putting the above agreement into effect I have written to the Consular Officials of the Netherlands in China, giving them the necessary instructions, and I would be pleased if you would inform me what action you have taken to this end.

I avail myself of this opportunity to renew to Your Excellency the assurances of my high consideration.

A. J. CITTERS

His Excellency, W. W. ROCKHILL,
etc., etc., etc.

The American Minister at Peking to the Netherlands Minister at Peking

PEKING, January 22, 1906

MR. MINISTER AND DEAR COLLEAGUE: In connection with the notes which I had the honor to exchange with Your Excellency on October 23, 1905, looking to the reciprocal protection from infringement by our respective nationals in China of trade marks belonging to them I duly transmitted copies of the same to my Government.

In reply the Secretary of State has called to my attention, as possibly misleading, the use made in my note to you of the word "punishment" by our Consular Courts in China of American citizens who may have infringed in China trade marks the property of persons under the jurisdiction of The Netherlands.

In view of the fact that there is no statute in the United States making the infringement, counterfeiting, etc. of a trade mark a criminal offense, and that effectual provision exists by a civil action for damages by the owner of a trade mark, my Government is of the opinion that the word "punishment" should be understood to refer to a civil action only, and not to a criminal procedure, as might be inferred from the use of the word in question without the present explanation added thereto.

I beg leave to call Your Excellency's attention to the above provision of our law, so that nothing in my note of October 23rd, last, may be construed as conflicting therewith.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

W. W. ROCKHILL

To His Excellency A. J. VAN CITTERS,
etc., etc., etc.